



Public Service Commission  
State of North Dakota

AUG 01 2017

COMMISSIONERS

Randy Christmann  
Julie Fedorchak  
Brian Kroshus

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

1 August 2017

Vonette Richter  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505-0360

*Via hand delivery only*

RE: Amendments to Administrative Rules, Practice and Procedure, PSC Case No. AD-17-49

Dear Ms. Richter:

Enclosed for publication in the North Dakota Administrative Code, please find a copy of amendments to N.D. Admin. Code Sections 69-02-04-01 and 02, Section 69-02-07-02, and Sections 69-02-09-01, 02, and 03, all relating to Practice and Procedure. In support of this filing, enclosed please find copies of:

- The Public Service Commission's 26 July 2017 Motion to add citations, adopt Rules as revised, and file, with final rules attached. The Public Service Commission adopted rules slightly revised from those approved by the Attorney General (adding a citation reference to N.D.C.C. § 44-04-18.4 to the three rules in Chapter 69-02-09).
- Letter from the Attorney General dated 14 July 2017 approving the proposed rules as to legality;
- The Public Service Commission's 26 April 2017 Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments;
- A fiscal note; and
- All written comments.

Thank you for your attention to this matter. If you have any questions, please call 328-2407, or e-mail to [ijs@nd.gov](mailto:ijs@nd.gov).

Best regards,

Illona Jeffcoat-Sacco  
General Counsel

attachments

**APPROVED**

DATE: 7/26/17  
AH

**MOTION**

**July 26, 2017**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

Having received written notification from the Attorney General that the rules are in substantial compliance with N.D.C.C. ch 28-32 and approved as to their legality, and having received an informal recommendation from the Office of the Attorney General to add a citation to an additional authority for the rules in chapter 69-02-09, I move the Commission add a reference to N.D.C.C. § 44-04-18.4 to the law implemented citations for sections 69-02-09-01, 02, and 13, and adopt the proposed amendments to North Dakota Administrative Code sections 69-02-04-01, 69-02-04-02, and 69-02-07-02, and, as revised by this motion, sections 69-02-09-01, 69-02-09-02 and 69-02-09-13, and forward the amendments to the Legislative Council for publication in Public Service Commission, Practice and Procedure, Rulemaking, Case No. AD-17-49.

## **CHAPTER 69-02-04 HEARINGS**

**69-02-04-01. Notice.** In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

**History:** Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 28-32-08, 49-01-07

**69-02-04-02. Appearances.** Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

**History:** Amended effective September 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**CHAPTER 69-02-07  
RULES**

**69-02-07-02. Notice.**

1. The commission will issue a notice that the rules are proposed and set for hearing which will include:
  - a. A short, specific explanation of the proposed rule;
  - b. A brief explanation of the purpose of the proposed rule;
  - c. A determination of whether the proposal impacts the regulated community in excess of fifty thousand dollars;
  - d. A location where the text of the proposed rule may be reviewed;
  - e. Notice to interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony;
  - f. The address to which written comments may be sent;
  - g. The address and telephone number at which a copy of the proposed rules and regulation analysis may be requested; and
  - h. The date, time, and place of the hearing.
2. The commission will publish an abbreviated newspaper notice in each official county newspaper in the state.
3. The commission will file the notice of hearing and a copy of the proposed rules with the legislative council ~~at least thirty days before the hearing.~~
4. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close ~~thirty~~ten days after

conclusion of the public hearing, unless extended by the commission.

5. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

**History:** Effective December 1, 1990; amended effective January 1, 2001;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02, 49-01-07

**CHAPTER 69-02-09**  
**PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

**69-02-09-01. Application to protect information.**

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
  - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
  - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
  - c. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
  - d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
  - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information

qualifies for protection.

5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 44-04-18.4, 47-25.1

**69-02-09-02. Filing of application.**

1. The application must be addressed to and filed with the executive secretary of the commission.
2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the commission. Only one copy of the protected material may be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 44-04-18.4, 47-25.1

**69-02-09-13. Information filed under sections 69-09-05-12 and 69-09-05-12.1 by telecommunications companies.**

~~Information filed to comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1~~ identified in subsections one through five of this



section is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-04~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed ~~to comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.
2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

**History:** Effective April 1, 2015; amended effective \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 44-04-18.4, 47-25.1



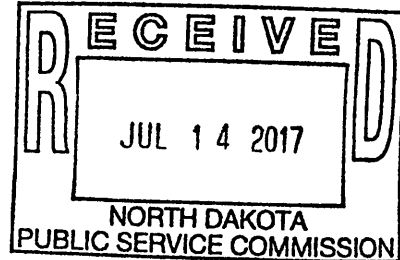
Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

OPINION

July 14, 2017



Ms. Illona Jeffcoat-Sacco  
Public Service Commission  
600 E Boulevard Ave  
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. title 69 concerning the Public Service Commission, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued nor requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the agency believes the proposed rules will not impact small entities, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem  
Attorney General

eee

cc: Vonette Richter, Legislative Council

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**April 26, 2017**

**Appearances**

Commissioners Randy Christmann and Julie Fedorchak

**Preliminary Statement**

On January 31, 2017, the North Dakota Public Service Commission (Commission) proposed changes to the Commission's administrative rules and issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Sections 69-02-04-01, 69-02-04-02, 69-02-07-02, and Chapter 69-02-09 of the North Dakota Administrative Code.

The proposed rules are summarized as follows:

**Rate Case Bill Stuffers – N.D. Admin. Code Section 69-02-04-01**

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers.

**Formal Appearance of Staff Analysts – N.D. Admin. Code Section 69-02-04-02**

The proposal is to repeal the existing rule requiring the staff analysts who work on a case to be noted in the appearances.

**Proposed Rules Procedure - N.D. Admin. Code Section 69-02-07-02**

One change is to eliminate the time requirement for filing proposed rules and notices with the Legislative Council. The other change is to reduce the post-hearing comment period from 30 days to 10 days.

**Protection of Information - N.D. Admin. Code Chapter 69-02-09**

The purpose of this rulemaking is to protect specific information filed by telecommunications companies without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission.

On February 1, 2017, Staff filed statements regarding the required regulatory analyses, small entity analyses, and takings assessments.

On February 2, 2017, the notices were filed with the Legislative Council for publication at least 30 days in advance of the hearing.

The weeks of February 10 through February 23, 2017, the Abbreviated Notice was published once in each of the 52 official county newspapers in the state.

On March 15, 2017, the Commission held the public hearing as noticed, beginning at 1:30 p.m., Central Time, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until April 17, 2017, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

### **Public Hearing and Comments**

Commission staff testimony was the only comment received at the hearing. After the hearing, comments were filed by the North Dakota Association of Telecommunications Cooperatives only on the proposed changes to Chapter 69-02-09.

#### **N.D. Admin. Code Section 69-02-04-01**

Staff testified that an advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

#### **N.D. Admin. Code Section 69-02-04-02**

Staff testified that while the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

#### **N.D. Admin. Code Section 69-02-07-02**

Staff testified that both changes are proposed to make the procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. These changes will have no impact on any stakeholder.

**N.D. Admin. Code Chapter 69-02-09**

Staff testified that the proposal is intended to permit certain Information to be protected without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages.

The North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments indicating that it fully supports the proposal. NDATC stated that adapting the proposed amendment will bring a clarity and common understanding of data that must be filed with the North Dakota Public Service Commission, as well as remove any ambiguities regarding when trade secret or confidential treatment of data must be requested by a company. Further, the NDATC stated the changed rule will continue to fully protect members and subscribers, provide the necessary protections in a highly competitive marketplace and reduce paperwork and resources for telecom companies.

**Discussion**

The Commission agrees with adopting the rules as originally proposed. The rationale provided by staff and the North Dakota Association of Telecommunications Cooperatives provides a sufficient basis to adopt the rules as proposed.

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

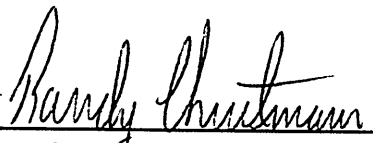
**Order**

The Commission orders the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**Proposed Rule**

**January 31, 2017**

**CHAPTER 69-02-04  
HEARINGS**

**69-02-04-01. Notice.** In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any

proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

**History:** Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 28-32-08, 49-01-07

**69-02-04-02. Appearances.** Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

**History:** Amended effective September 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**Proposed Rule**

**January 31, 2017**

**CHAPTER 69-02-07  
RULES**

**69-02-07-02. Notice.**

1. The commission will issue a notice that the rules are proposed and set for hearing which will include:
  - a. A short, specific explanation of the proposed rule;
  - b. A brief explanation of the purpose of the proposed rule;
  - c. A determination of whether the proposal impacts the regulated community in excess of fifty thousand dollars;
  - d. A location where the text of the proposed rule may be reviewed;
  - e. Notice to interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony;
  - f. The address to which written comments may be sent;
  - g. The address and telephone number at which a copy of the proposed rules and regulation analysis may be requested; and
  - h. The date, time, and place of the hearing.

2. The commission will publish an abbreviated newspaper notice in each official county newspaper in the state.
3. The commission will file the notice of hearing and a copy of the proposed rules with the legislative council ~~at least thirty days before the hearing.~~
4. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close ~~thirty~~ten days after conclusion of the public hearing, unless extended by the commission.
5. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

**History:** Effective December 1, 1990; amended effective January 1, 2001;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02, 49-01-07

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**Proposed Rule**

**January 31, 2017**

**CHAPTER 69-02-09  
PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

**69-02-09-01. Application to protect information.**

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
  - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
  - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
  - c. A general description of the persons or entities that would obtain

- economic value from disclosure or use of the information;
- d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
  - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-02. Filing of application.**

1. The application must be addressed to and filed with the executive secretary of the commission.
2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the

commission. Only one copy of the protected material may be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-03. Processing the application.**

When an application for protection of information is filed, the commission staff shall examine the information and application, and file and serve a response that includes a recommendation on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application, the recommendation, and any response received from those served.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-04. Protective order.**

Upon a determination that information qualifies for protection, the commission shall issue a protective order limiting disclosure.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.**

1. Upon a determination that the information does not qualify for protection,

the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.

2. If any person disagrees with the designation of information as protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the protected status.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-13. Information filed under sections ~~69-09-05-12~~ and ~~69-09-05-12.1~~ by telecommunications companies.**

~~Information filed to comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1 identified in subsections one through five of this section~~ is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-01~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed ~~to comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.

2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

**History:** Effective April 1, 2015; amended effective \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**FISCAL NOTE**

**25 April 2017**

Adoption of the proposed rules in the captioned case is not expected to have any impact on state expenditures or revenues.



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY  
CUSTOMER NOTICE – APPEARANCES - PROPOSED RULES PROCESS**

**March 15, 2017**

My name is Illona Jeffcoat-Sacco. I am General Counsel with the Public Service Commission. The proposed rules affect the following four topics: 1) individual customer notice in cases related to utility rates (bill stuffers); 2) appearances at formal hearings; 3) filing proposed rules with the Legislative Council and the post-hearing comment period for proposed procedural rules; and 4) protection of certain information filed by telecommunications companies. This testimony discusses the first three, and the fourth is being discussed by Pat Fahn, Public Utilities Director.

- 1. Rate Case Bill Stuffers - N.D. Admin Code section 69-02-04-01**
- 2. Appearances at Formal Hearings - N.D. Admin Code section 69-02-04-02**

The existing bill stuffer rule lists several cases in which the applicant utility must provide individual notice of the application to customers. The proposed change adds one additional type of case, an advanced determination of prudence case to this list. Advanced determination of prudence cases have ratemaking consequences and therefore should require individual customer notice. Current practice is to require and provide individual customer notices in these types of cases due to the ratemaking consequences, so the rule change should have no impact on industry, customers, the public, or other stakeholders.

The existing rule on appearances requires that staff analysts who work on the case be noted in the appearances. At hearings, counsel introduces the staff working on the case, but the rule requiring these staff members be listed in the appearances has been inconsistently followed and serves no discernable purpose. In addition, it could imply that staff analysts are engaging in the unauthorized practice of law. Repealing the language would have no impact on any stakeholder. The two proposed changes just discussed were previously proposed and adopted by the Commission in Case No. AD-14-762, but due to an inadvertent error, were never approved by the Attorney General and were never filed with the Legislative Council.

**(3) Filing proposed rules with Legislative Council and post-hearing comment period for proposed procedural rules - N.D. Admin. Code section 69-02-07-02 (3) and (4)**

This change is proposed to eliminate an outdated requirement to file proposed rules and rules notices with the Legislative Council at least thirty days before the hearing. Current law requires filing with the legislative Council, but does not impose a time requirement on this filing.

The other change is to reduce the post-hearing comment period from thirty days to ten days.

Both changes would result in making the Commission's rulemaking procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. Neither change should have any impact on any stakeholder.

This completes my comments.

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY  
PROTECTION OF INFORMATION**

**March 15, 2017**

My name is Patrick Fahn. I am the Director of the Public Utilities Division of the Public Service Commission.

The purpose of this testimony is to describe the proposed administrative rule changes to North Dakota Administrative Code chapter 69-02-09 pertaining to procedures for protecting information from disclosure.

Current rules prescribe protection for certain information filed by telecommunications companies in the annual report to the commission required under 69-09-05-12.1. Information protected without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages.

This proposed rule change extends this "prescribed" protection to those two information types contained in any filing with the commission, and expands this prescribed protection to disaggregated data on provisioned volumes of local services by service type and local exchange, disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange, and

any financial information that is protected by a Federal Communications Commission Protective Order.

The Commission receives 80 or more filings each year that contain some or all of these information types. The proposed rule regarding information that both the industry and the Commission have found should be protected; and removing the requirement to file an application, the requirement for staff analysis, and the requirement for a Commission decision each time these types of information are filed; will result in a more efficient administrative process and will save resources for both the regulated community and the agency.

This concludes my testimony.

Thank you.

## **-Info-Public Service Commission**

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**From:** d. crothers <dcrothers@yahoo.com>  
**Sent:** Monday, April 17, 2017 8:57 AM  
**To:** -Info-Public Service Commission  
**Cc:** Fahn, Patrick J.  
**Subject:** N.D. Association of Telecom Cooperative Comments for Case Number AD-17-49

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North Dakota Public Service Commission:

My name is David Crothers. I am the executive vice president of the North Dakota Association of Telecommunications Cooperatives. The Association represents the entire independent telecommunications industry in the State.

The Association is fully supportive of the proposed rule changes to North Dakota Administrative Code chapter 69-02-09 pertaining to procedures for protecting information from disclosure. The Association believes adopting the proposed amendment will bring a clarity and common understanding of data that must be filed with the North Dakota Public Service Commission, as well as remove any ambiguities regarding when trade secret or confidential treatment of data must be requested by a telecommunications company.

Adoption of the proposed rule will, in the Association's judgment, continue to fully protect members and subscribers, provide the necessary protections in a highly competitive marketplace and reduce paperwork and resources for telecom companies.

Members of the Association include BEK Communications, Consolidated Telcom, Dakota Central Telecommunications, Dickey Rural Networks, Intercommunity Telecommunications Company, Midstate Telecommunications Company, MLGC, Nemont Telephone Cooperative, North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Corporation, Red River Communications, Reservation Telephone Cooperative, SRT, United Telephone Mutual Aid Corporation and West River Telecommunications Cooperative.

Thank you,

David Crothers  
Executive Vice President  
N.D. Association of Telecommunications Cooperatives  
Mandan, N.D. 58554  
Work: 701-663-1099  
Cell: 701-471-3838